amount needed be subscribed before Commencement. To that end every graduate who has not already subscribed to this fund, is urged to do so at once. It was intended to send a copy of the above letter to every graduate, but in case any has failed to receive such notice, this statement will sufficiently inform him of the nature of the undertaking, and his subscription will be very gladly received.

At the annual meeting of the YALE LAW JOURNAL Corporation, held on Wednesday, May 22, 1901, Mr. Charles Tressler Lark was elected Chairman of the Board for the coming year, and Mr. Frank William Tully, Business Manager.

At a recent meeting of the editors of the JOURNAL, the following members of the Junior class were elected to the board: Messrs. George H. Bartholomew, Stanley W. Edwards, Sigisimma Engelking, Charles D. Lockwood and Mason H. Newell.

This number completes the tenth volume of the YALE LAW JOURNAL.

COMMENT.

THE "PREVAILING RATE" DECISION IN NEW YORK.

The most important decision in New York State in recent years is that rendered recently by its Court of Appeals in the now celebrated case of *People ex rel. Rodgers* v. *Coler*. Not only did the legality of claims to the amount of six million dollars hinge on this decision, but what is infinitely more important, it prescribes limitations on legislative control of municipalities that are inherent and implied in the Constitution of the State.

There is no dispute in respect to the facts and the papers show that in February, 1900, the relator entered into a contract with New York City for grading a portion of one of its streets. The contract provided that the engineer's decision

should be conclusive and final as to the amount and quality of the work done. After the completion of the work the said official made a written certificate that the sum of $2,863.00 was earned, due and payable under the contract. The comptroller refused, however, to deliver his warrant for said sum, based on the fact that the relator in the performance of the contract had violated certain provisions of the labor law. The relator therefore brought an action to compel payment.

The substance of the statutes alleged to have been violated in briefest form is that all contracts for public work entered into by the city shall contain a stipulation that each laborer or workman employed by any contractor shall receive the wages prevailing in the same trade or occupation in such locality. The statutes further provided than any contract made in violation of these provisions should be void, and that any proper officer knowingly permitting the violation, should be suspended or removed.

With the issues thus squarely presented the Court of Appeals—Parker, C.J., and Haight, J., dissenting—pronounced the law unconstitutional and void; further, that the legal effect of the promise of the relator to pay the prevailing rate, depends on the validity of the law which compels such promise, and the law being void the promise falls with it, leaving the contract of the parties freed from this provision.

The question is close and in its determination we foresee serious conflict in the decisions of the various States. When a decision rests in large measure on the implied restrictions of a particular State constitution, its value as a precedent in other States is materially lessened. Yet it is instructive as interposing another barrier to legislative control, and as constituting another check on legislative interference with liberty of contract.

During the last forty years the necessity of legislative restraint has been felt in all the States, and New York has been foremost in curbing legislative power by express constitutional enactments. Her court of last resort now takes a firm stand, and says that these provisions shall be construed with extreme liberality. This liberal construction, the Chief Justice in his dissenting opinion characterizes as "judicial encroachment on the legislative prerogative," which, of course, intimates that the majority is influenced in expounding the law by what it ought to be and not by what it is.

The majority opinion alludes to the distinction between the

governmental and the private capacities of the city, so well recognized in municipal law. It is urged that while the legislative power is transcendent in a governmental capacity, it does not extend to the wages private persons shall pay their servants. The line is shadowy which marks the division between the private and governmental interests of a municipality, and here again the States are in direct conflict.

The Chief Justice dissenting, argues the control of streets is a subject of governmental concern; that the statute imposes no obligation on the contractor to make the contract; that the State can compel its governmental arm, *viz:* the city, to impose any reasonable condition as a term of the contract, and that the acceptance of the term is purely a matter of his own volition. The Chief Justice further urges that the State in its public work could prescribe that a certain kind of cement should be used even if this condition enhanced the cost of the construction, and that a compulsory term to pay "going wages" is analogous.

The majority combats this argument by claiming that this condition is incorporated into the contract, not by the consent of the parties, but solely by force of the mandate of the statute, and there is weight in this contention. What would be thought of a condition requiring the contractor to vote the ticket of a specified political party?

One respect in which the law is certainly vulnerable is the indefiniteness of the term "prevailing rate," and this weakness is clearly pointed out in the ruling opinion. Many elements enter into the determination of this question, notably grade of service, competition and ability, and the standard is too hazy for judicial decision. Doubtless the framers of the law intended the standard should be fixed by the labor organizations of each locality.

During the last few years the New York legislature has actively interfered in the matter of municipal contracts. It will be interesting to observe to what extent some of this legislation will be affected by the present decision.